

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

OSCAR RAMIREZ, JAVIER GUERRERO,  
GERONIMO HERCULANO, PABLO RUTILIO,  
MAGGIE ANDRES CRECENCIO, GUILLERMO ALVAREZ,  
JUANA CRUZ HERNANDEZ, LEONIDAS MATEO,  
ANYELI OVALLES HERNANDEZ, MIRNA REYES  
MARTINEZ, RAMON ROSARIO, OMAR TAVERAS,  
LUIS ESPINAL, and JUAN SALMERON on behalf of  
themselves and others similarly situated,

No.: 14 -cv- 4030

Hon. Valerie E. Caproni

**AFFIDAVIT OF ANYELI  
OVALLES HERNANDEZ IN  
SUPPORT OF PLAINTIFFS'  
REQUEST FOR CONDITIONAL  
CLASS CERTIFICATION**

Plaintiffs,

v.

M L RESTAURANT, CORP., M.L. SAN JOSE ENTERPRISES, CORP.,  
d/b/a LIBERATO RESTAURANT, ANTONIO MANUEL LIBERATO,  
FERNANDO LIBERATO, VICTOR LIBERATO, NELSON GOMEZ,  
LUCY GOMEZ, SARAH VALLEJO, NANA (LNU), and ROMEO (LNU)  
jointly and severally,

Defendants

State of New York )

) ss.:

County of New York )

ANYELI OVALLES HERNANDEZ, residing at 2111 Grand Ave. Apt #3, Bronx, New York, being duly sworn, deposes and says:

1. On or about January 7, 2012 I was hired by Liberato Restaurant.
2. Liberato Restaurant is an establishment with locations at 1 West 183<sup>rd</sup> Street and 10 West Burnside Avenue, County of the Bronx, State of New York.
3. I work at the 1 West 183<sup>rd</sup> St. location as a counterperson, phone order taker, and food preparation worker.

4. I work the dayshift behind the counter. I serve customers seated at the counter and prepare food and answer the phone behind the counter.

5. On my shift approximately a dozen other people work with me in the front of the restaurant.

6. Until on or about January 1, 2014, I regularly worked nine (9) hours a day, six (6) days a week and was paid \$240. Since on or about January 1, 2014, I work five days a week, nine (9) hours a day and I am paid \$200. I am paid weekly in cash. I believe the other counter people receive the same pay in the same manner.

7. On at least two (2) days a week, for approximately three (3) hours a day, I work in the basement preparing salads and juices.

8. When working behind the counter, I receive tips from customers.

9. When I receive tips, I must hand them to the manager, who holds them until the end of shift. At the end of the shift, the manager returns the pooled tips to us to distribute daily.

10. No manager ever explained how the tip pool works.

11. When the tips are distributed we do not receive any record of the tips we receive.

12. When the sandwich maker or deli person has a day off, all the counter people are required to share tips with the substitute sandwich maker or deli person, who do not serve customers directly.

13. I do not receive overtime for hours worked in excess of forty (40) per week. I do not know of any Liberato worker at the 183<sup>rd</sup> St location who receives overtime.

14. During my employment with Liberato, I have worked without breaks of more than five (5) or ten (10) minutes. Since I became pregnant, I now receive fifteen minutes (15) to eat.

15. I do not, nor have I ever, received a statement of wages. I believe this is true of my coworkers.

16. To receive my pay I must sign in a book kept by the manager. When I worked six days a week I was required to sign beside a record stating that I received \$240 in wages and \$410 in total including tips, but I never received so much tips as \$170. Now I must sign beside a record stating that I receive \$200 in wages and between \$150 and \$120 in tips, but I never received so much in tips.

17. I believe that my coworkers and I are treated similarly.

WHEREFORE, it is respectfully urged that the request for conditional certification of a representative class be granted.

Sworn to before me this

Anyeli E. Ovalles

ANYELI OVALLES HERNANDEZ

26<sup>th</sup> day of September 2014.

REBECCA T. ISHAK  
Notary Public, State of New York  
No. 01IS6286012  
Qualified in Queens County  
Commission Expires July 22, 2017

Rebecca Ishak  
Notary Public